IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.451 OF 1992

DATE OF DECISION: MAY 10, 2007

Mohan Singh

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: None for the petitioner.

Mr. Parveshinder Singh Sidhu, Addl.A.G., Punjab, for the State.

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RANJIT SINGH, J. (ORAL)

Petitioner, Mohan Singh has filed this petition impugning his conviction under Section 61(1)(a) of the Punjab Excise Act, whereby he is sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-. He is to undergo RI for four months in default of payment of fine. The petitioner, on being unsuccessful in his appeal against the order of conviction and sentence, has filed the present revision.

The facts, in brief, are that on 25.2.1988, one Head Constable Rajinder Singh, while being present at Bus Stand, Ghumiara, received a secret information that the petitioner was selling illicit liquor near brick-kiln and he could, thus, be caught red handed in case raid is conducted. On raid being

conducted, the petitioner was found in possession of two tubes containing illicit liquor. Samples were drawn from the tubes and remaining liquor measured, which came up to be 99-1/4 bottles. The liquor was poured back to the tubes and was taken into possession. On completion of investigation, challan was filed, leading to trial, conviction and sentence.

This revision was filed by Sh.K.S.Brar, Advocate, and is pending adjudication since the year 1992. The petitioner was ordered to be released on bail on 5.8.1992. When this case came up for hearing before this Court on 4.1.2007, notice was issued to the petitioner by observing that Mr.K.S.Brar, Advocate, had left the country for good and was no more practicing in this Court. The office has reported that notice issued to the petitioner has not been received back served or otherwise. Normally, another notice could have gone to the petitioner but it is not being done as the case is pending adjudication here for more than 15 years and petition is a revision petition.

I have perused the record as well as the findings returned by the Courts below. The main grievance raised by the petitioner seems to be that no independent witness was joined at the time of conducting the raid. Even Khiali Ram stated to have been joined in the raid, was not examined by the prosecution. It is noticed that Khiali Ram was given up by the prosecution as having been won over. Accordingly, it will not be possible to say that the police had not joined any independent witness at the time of conducting the raid. Nothing substantial otherwise is noticed, which would reveal any false implication of the petitioner by the police, especially so when

the recovery in this case is so heavy. Accordingly, I do not find any infirmity in the findings recorded by the Courts below, which may call for interference in this revision petition. However, it is noticed that the plea of the petitioner raised before the Courts below for his release on probation apparently was not properly dealt with. The only reason to deny him the benefit of probation, as noticed by the appellate Court, was that this would encourage the persons in society to indulge in bootlegging. The sentence awarded to the petitioner is of one year coupled with fine of Rs.1,000/-. This sentence cannot be said to be such a punishment, which can really act as a deterrent for others in the society. Even otherwise, this incident is of the year 1988 and the petitioner has faced prolonged prosecution and trial for nearly four years. His appeal is pending before this Court for the last about 15 years. Thus, the petitioner has undergone prosecution and faced proceedings in this case for about 19 years. Asking the petitioner to undergo punishment at this stage may not sound fair and reasonable. The record also reveals that the petitioner had undergone some portion of the rigorous imprisonment, before he was ordered to be released on bail. This is, thus, a fit case where the sentence awarded to the petitioner may need interference.

Accordingly, while dismissing the revision, the sentence awarded to the petitioner is directed to be reduced to the period already undergone. The bail bonds, if any, furnished by the petitioner shall stand discharged.

May 10, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**